IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.216 OF 2007

Shri.Rajaram Maruti Chavan ...Appellant

Versus

Shri.Mahadeo Maruti Chavan & Anr. ...Respondents

.....

Mr.M.N.Dhamal for Appellant.

None for Respondents.

.....

**CORAM: A.M.KHANWILKAR, J.**

**JULY 17, 2007.**

**P.C.**

1. Three contentions have been raised before this Court.

2. The first is related to issue of suit being barred by Law of Limitation. The second is in relation to the view expressed on the plea of ouster. The third point is regarding the house property being the self acquired property of the

Appellant.

3. I shall immediately address the issue regarding ouster. If this issue is answered against the Appellant, in that case, the issue of limitation will recede in the background because the Suit will then have to be assumed as having been brought within limitation. Insofar as plea of ouster is concerned, Counsel for the Appellant had pressed into service Judgment of the Division bench of the Kerala High Court in the case of **Velliyottummel Sooppi & Ors. v. Nadukandy Moossa & Ors. reported in AIR 1969 Kerala 222 (V 56 C 53)** to contend that if circumstances exist to show that the Appellant was continuously in possession of the suit property without sharing it with other co-owners, it is a strong circumstance, indicative of or on which an inference can be drawn that there was ouster of the co-owners not in possession. The observations made in the said decision is in relation to the fact situation of that case. In my opinion, the Appellant Court has invoked correct principle of law to consider the plea of ouster and adverse possession. After going through the

discussion in the Judgment of the Appellate Court with reference to Point No.2, in particular, Paragraphs 17 and 18, I have no difficulty in upholding the conclusion reached by the Appellate Court. The Appellate Court has applied the correct principle that issue of ouster is a matter involving action and not mere inaction of the co-sharer in possession. There has to be positive animus and not negative animus. Applying that principle, the evidence on record has been considered threadbare by the Appellate Court before reaching at the conclusion that there was no open assertion of hostile title, coupled with exclusive possession and enjoyment by the Appellant, to the knowledge of the Plaintiff to constitute exclusion of the Plaintiff by the Appellant in relation to the joint family property. I see no propriety in reappreciating the evidence on record to take a different view, assuming that it is possible to do so. That is not the scope of exercising powers to entertain Second Appeal.

4. Insofar as the issue regarding house property is concerned, once again, whether the same

was self acquired property or a joint family property, will be a question of fact. The Court below has analysed the evidence on record to answer the same. In my opinion, the view taken by the Appellate Court being a possible view, no interference is warranted, as the Appeal does not raise a question of law, much less, substantial question of law.

5. Accordingly, no interference is warranted in Second Appeal. Dismissed.

A.M.KHANWILKAR, J.